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Mary Cannon t/a Enviro-Tech and Laborers' Local 332, Laborers International Union of North America, AFL-CIO. Case 4-CA-33360

March 16, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed by the Union on September 21 and November 30, 2004, the General Counsel issued the complaint on November 30, 2004, against Mary Cannon t/a Enviro-Tech, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On December 28, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On January 4, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by December 14, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 14, 2004, notified the Respondent that unless an answer was received by December 21, 2004, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a sole proprietorship with an office at 1735 Market Street, Suite 418,

Philadelphia, Pennsylvania, has been engaged in performing cleaning and demolition services for businesses.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, received in excess of \$50,000 to perform cleaning and demolition services for 2700 North Broad Street, LLP, a limited liability company within the Commonwealth of Pennsylvania, located at 2700 North Broad Street, Philadelphia, Pennsylvania, herein called the jobsite. At all material times, 2700 North Broad Corp., a New York corporation, has been the general partner of 2700 North Broad Street, LLP.

During the 12-month period preceding issuance of the complaint, 2700 North Broad Street, LLP and its general partner, 2700 North Broad Corp., purchased and received services valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Laborers' Local 332, Laborers International Union of North America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Mary Cannon and Marcus Cannon have been the Respondent's owner and general manager, respectively, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

The Respondent, by Mary Cannon, engaged in the following conduct:

(a) On or about September 10, 2004, at the jobsite, threatened an employee that employees who voted for union representation would be discharged.

(b) On or about September 17, 2004, at a PNC Bank on Girard Avenue, Philadelphia, Pennsylvania, told employees that the Respondent was closing its business and would not assign the employees to remaining work because they supported the Union.

On or about September 10, 2004, the Respondent, by Marcus Cannon, in the presence of Mary Cannon, at the jobsite, threatened employees with unspecified reprisals because they supported the Union.

On or about September 10, 2004, the Respondent failed and refused to pay its employees Erick Sanders and Yuhanna Hafeez.

On or about September 17, 2004, the Respondent terminated the employment of employees Erick Sanders and Yuhanna Hafeez.

The Respondent refused to pay Sanders and Hafeez and discharged them because they supported the Union.

CONCLUSIONS OF LAW

1. By the conduct and statements of Mary Cannon and Marcus Cannon described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By refusing to pay employees Erick Sanders and Yuhanna Hafeez since on about September 10, 2004, and by discharging them on about September 17, 2004, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(1) and (3) of the Act.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging Erick Sanders and Yuhanna Hafeez, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that the Respondent violated Section 8(a)(1) and (3) by failing to pay employees Sanders and Hafeez for approximately 1 week between September 10, 2004, and when they were unlawfully discharged on September 17, 2004, we shall order the Respondent to make them whole for losses they suffered as a result of this conduct, pursuant to *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, *supra*.

The Respondent shall also be required to remove from its files all references to the unlawful discharges of Sanders and Hafeez, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Mary Cannon t/a Enviro-Tech, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge if they vote for union representation.

(b) Telling employees that it was closing its business and would not assign employees to remaining work because they supported Laborers' Local 332, Laborers International Union of North America, AFL-CIO, or any other labor organization.

(c) Threatening employees with unspecified reprisals because they support the Union, or any other labor organization.

(d) Failing and refusing to pay employees because they support the Union, or any other labor organization.

(e) Discharging employees because they support the Union, or any other labor organization.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Erick Sanders and Yuhanna Hafeez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make whole Erick Sanders and Yuhanna Hafeez for any loss of earnings and other benefits resulting from the refusal to pay them and their subsequent unlawful discharges, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful discharges of Erick Sanders and Yuhanna Hafeez and, within 3 days thereafter, notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 10, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 16, 2005

Robert J. Battista,	Chairman
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Wilma B. Liebman,	Member
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Peter C. Schaumber,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discharge if you vote for union representation.

WE WILL NOT tell you that we are closing our business and will not assign you to remaining work because you support Laborers' Local 332, Laborers International Union of North America, AFL-CIO, (the Union), or any other labor organization.

WE WILL NOT threaten you with unspecified reprisals because you support the Union, or any other labor organization.

WE WILL NOT fail and refuse to pay you because you support the Union, or any other labor organization.

WE WILL NOT discharge you because you support the Union, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Erick Sanders and Yuhanna Hafeez full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Erick Sanders and Yuhanna Hafeez for any loss of earnings and other benefits resulting from our unlawful refusal to pay them and their unlawful discharges, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful terminations of Erick Sanders and Yuhanna Hafeez, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful discharges will not be used against them in any way.

MARY CANNON T/A ENVIRO-TECH